IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.2751 OF 1996

B.F. Chemicals and Packaging
Industries Ltd. ...Plaintiffs
V/s.
Shree Dashnami Goswami (Gosai)
Community Trust and Ors. ...Defendants

Mr.R.C. Shah i/b. Lilani Shah & Co. for Plaintiffs.
None for defendants.

CORAM : A.S. AGUIAR, J.
DATED : SEPTEMBER 7, 2004.

P.C. :-

1. Mr.Shah, Advocate for plaintiffs files affidavit on evidence dated 7th September, 2004 and compilation of documents dated 24th August, 2004. Same are taken on record. Para 36 of the affidavit states that plaintiffs relies upon the copies of Exhibit "B" to "L" as the originals are not available with him. They have been misplaced and not traceable and therefore, prays that he be allowed to lead secondary evidence by relying upon the said copies of correspondence.

2. The matter has been placed under the caption of "Undefended Suits" by the Prothonotary’s order dated 3rd

July, 2002 on account of written statement not being filed by the defendants though they have been served. Affidavit of service of the writ of summons dated 22nd May, 1998 is on record. This suit is for specific performance of agreement dated 13th September, 1993. Defendants have committed breach of the agreement of sale as the defendants have failed to obtain permission of the Charity Commissioner, the property in question being trust property. Correspondence on record discloses the sale transaction. The original agreement dated 13th September, 1993 and xerox copies of the correspondence manifest the said transaction. Since the permission of the Charity Commissioner is not obtained within the stipulated period as stated in the Notice dated 7th June, 1994, plaintiffs have filed the present suit. Since no written statement is filed, there is no denial of the averments in the plaint which have, therefore, to be taken as admitted and plaintiffs are entitled to a decree. However, Plaintiffs do not press prayer clause (a) for specific performance and claim the alternative prayer of costs and damages.

3. In the circumstances, there will be a decree in favour of the plaintiffs under Order VIII Rule 10 in terms of prayer clause (b)(i), (ii) and (iii) of the Plaint. Interest on the claim for damages of Rs.5,20,59,258/- is restricted at the rate of 12% from the date of filing of the suit till the realisation.

4. Decree accordingly. No order as to costs.

. Certified copy expedited.

(A.S. AGUIAR, J.)